

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

J. L. WINDHAM,

Plaintiff,

v.

ST. LOUIS COUNTY CIRCUIT COURT,
et al.,

Defendants.

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No. 4:17-CV-1381 ERW

MEMORANDUM AND ORDER

Plaintiff seeks leave to proceed in forma pauperis in this civil action under 42 U.S.C. § 1983 and state law. The motion is granted. Additionally, plaintiff must show cause why this action should not be summarily dismissed.

Standard of Review

Under 28 U.S.C. § 1915(e), the Court is required to dismiss a complaint filed in forma pauperis if it is frivolous, malicious, or fails to state a claim upon which relief can be granted. To state a claim for relief, a complaint must plead more than “legal conclusions” and “[t]hreadbare recitals of the elements of a cause of action [that are] supported by mere conclusory statements.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A plaintiff must demonstrate a plausible claim for relief, which is more than a “mere possibility of misconduct.” *Id.* at 679. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 678. Determining whether a complaint states a plausible claim for relief is a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. *Id.* at 679.

When reviewing a complaint under 28 U.S.C. § 1915(e), the Court accepts the well-pled facts as true. Furthermore, the Court liberally construes the allegations.

The Complaint

In 2005, plaintiff was arrested and charged with assault. On September 26, 2005, he pled guilty to one count of second-degree assault. *Missouri v. Windham*, No. 2105R-03544-01 (St. Louis County). Plaintiff says the police who arrested him and the prosecutor who tried him violated his rights.

Discussion

“Although the statute of limitations is an affirmative defense, a district court may properly dismiss an in forma pauperis complaint under 28 U.S.C. § 1915[e] when it is apparent the statute of limitations has run.” *Myers v. Vogal*, 960 F.2d 750, 751 (8th Cir. 1992). Section 1983 claims are analogous to personal injury claims and are subject to Missouri’s five-year statute of limitations. *Sulik v. Taney County, Mo.*, 393 F.3d 765, 766-67 (8th Cir. 2005); Mo. Rev. Stat. § 516.120(4).

Here, the limitations period expired sometime in 2010. As a result, plaintiff must show cause why this action should not be summarily dismissed.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [ECF No. 2] is **GRANTED**.

IT IS FURTHER ORDERED that, no later than twenty-one (21) days of the date of this Order, plaintiff must show cause why this action should not be dismissed.

If plaintiff does not comply with this Order, the Court will dismiss this action without further proceedings.

So Ordered this 22nd day of August, 2017.

A handwritten signature in black ink, appearing to read "E. Richard Webber". The signature is fluid and cursive, with a prominent "E" and "R".

E. RICHARD WEBBER
SENIOR UNITED STATES DISTRICT JUDGE